



ALAN WILSON
ATTORNEY GENERAL

April 24, 2012

The Honorable Bill Bowers
Representative, District No. 120
310-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Bowers:

You have requested an opinion of this Office concerning fees included on municipal property tax bills. Specifically, you have inquired: (1) whether a municipality must accept a payment for the taxes only without payment for any fees; (2) whether real property can be sold by the municipality for failure to pay the fees; and (3) whether fees must be abated for persons who receive a homestead exemption pursuant to section 12-37-250 of the South Carolina Code (2000 & Supp. 2011).

Analysis

Partial payment

We look first to whether a municipality must accept a payment for taxes only without payment for any fees included on the tax bill.

In general, municipalities have significant freedom to order their local affairs in a manner not inconsistent with general law. *See* S.C. Code Ann. § 5-7-30 (2004 & Supp. 2011) ("Each municipality of the State . . . may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State . . . including the authority to levy and collect taxes . . . make assessments, and establish uniform service charges relating to them . . ."). Likewise, municipalities have broad discretion with regard to the procedure for collecting municipal taxes. For example, section 5-7-300 of the South Carolina Code (2004 & Supp. 2011) provides that a municipality may determine its own "tax year, penalty dates, and the amount of penalty to be added on the penalty dates." It further provides:

A municipality may contract with the county for the collection of municipal taxes or for the collection of delinquent municipal taxes upon terms and conditions mutually agreeable to both the municipality and the county. If a municipality contracts with a county for collection of municipal taxes or delinquent municipal taxes, the provisions of state law that prescribe the procedure for collection of property taxes by counties must be followed.

Id. (emphasis added). Thus, it appears that a municipality will be bound by county collection procedures only if it contracts with a county for tax collection. Similarly, section 5-21-120 of the South Carolina Code (2004) provides municipalities with discretion regarding the acceptance of installment payments:

The cities and towns of this State may collect the taxes of such cities or towns in such installments as the municipal authorities thereof may by ordinance prescribe.

As to fees, the collection procedure would depend in part upon whether the statute authorizing the fee included any requirements regarding that issue. However, absent a constitutional or statutory provision requiring the acceptance of a payment that satisfies only a portion of the amount due on a tax bill, a court likely would find that whether to accept such payment lies in the municipality's discretion. We are not aware of a provision that requires municipalities to accept partial payments of the kind described in your request. *Cf.* S.C. Code Ann. § 12-45-140 (2000) (requiring municipal tax collectors to accept payment from a transferee of property for a proportionate part of the taxes and costs assessed against the previous owner).

A separate but related question is whether a tax collector may withhold a tax receipt for failure to pay a fee included on a tax bill. In a 2004 opinion, this Office concluded there was "substantial doubt" about whether a county treasurer could withhold a tax receipt for non-payment of a fee imposed by the county. Letter to Jonathan M. Robinson, Op. S.C. Att'y Gen. (Jan. 13, 2004). In 2005, the General Assembly resolved this doubt, providing "[a] county treasurer may not issue a tax receipt to a taxpayer unless the taxes, any applicable penalties and costs, and all other charges included on the tax bill have been paid in full." Act No. 145, § 46, 2005 S.C. Acts 1634, 1667-68 (codified at S.C. Code Ann. § 12-45-430 (Supp. 2011)) (emphasis added). By analogy, it is likely that a municipality could refuse to issue a tax receipt for a payment that did not satisfy all charges on its tax bill.

Sale for non-payment

We turn next to whether real property may be sold for failure to pay a fee included on a property tax bill.

In *Town of Cheraw v. Turnage*, our Supreme Court considered the mechanisms available for the enforcement of municipal paving assessments. 184 S.C. 76, 191 S.E. 831 (1937). In the decree of the circuit judge, which was adopted as the opinion of the Court, the enforceability of such assessments was explained as follows:

[A]lthough this constitutional provision gave to municipalities the power to impose paving assessments, no provision was made for the enforcement of the liens thereby created. Hence, upon well-settled legal principles, assessments levied under the provisions of the Constitution would have been enforceable in equity, by way of foreclosure, as the only effectual remedy.

....

[In] 1919 . . . the General Assembly enacted the provision which is now incorporated in the Code as Section 7376. This statute provides that "the assessments so laid shall constitute and be a lien upon the property so assessed, and payment thereof may be enforced as the payment of city or town taxes is enforced." Under this provision, it is of course apparent that a paving assessment lien may be enforced by the levy of an

execution and a sale in accordance with the procedure relating to taxes.

Id. at 82-83, 94, 191 S.E. at 834-35, 839 (emphasis added). Thus, the creation of a lien was alone sufficient to confer the ability to foreclose that lien by a suit in equity. As an alternative, a statute providing for enforcement of the lien in the same manner as municipal taxes allowed for enforcement via tax sale.¹

Your request does not specify the nature of the fees with which you are concerned. Thus, we cannot determine whether such fees are secured by a lien on real property and/or are collectible in the same manner as property taxes.² See generally Letter to Timothy H. Pogue, Op. S.C. Att’y Gen. (Nov. 20, 2000) (opining that it is questionable whether a local governing body may impose a lien by ordinance without specific statutory authorization therefor). However, a court likely would find municipal fees that constitute a lien on real property and are collectable in the same manner as taxes may be enforced by foreclosure or by a delinquent tax sale held pursuant to title 12, chapter 51 of the South Carolina Code. See *Town of Cheraw*, 184 S.C. at 82-83, 191 S.E. at 834-35 (quoted above); Letter to Jonathan M. Robinson, *supra* (“[I]t appears the demolition fee is enforceable either through the same procedure as exists for the non-payment of taxes or through a foreclosure action.”). Moreover, *Town of Cheraw* suggests that a fee secured by a lien might be enforceable by foreclosure even if it is not enforceable using the procedure for delinquent tax sales.

Homestead exemption

We turn last to whether fees included on a property tax bill must be abated for persons who receive a homestead exemption pursuant to section 12-37-250 of the South Carolina Code. Section 12-37-250

¹ *Town of Cheraw* clarified that, though the tax sale procedure is available for the enforcement of an assessment lien, there are essential differences between taxes and assessments that remain intact. Thus the Court stated:

Even if the enforcement of an assessment should be undertaken in the manner provided for the enforcement of taxes, it would not follow that the attributes of a tax sale are also the attributes of a sale to impose an assessment. There is a vital difference between the incidents of an assessment and of a tax, as hereinbefore pointed out, and it is one thing to assimilate the procedure for the enforcement of assessments to that for the enforcement of taxes, and an entirely different thing to declare that the two liens have the same attributes.

184 S.C. at 91, 191 S.E. at 838. The same could be said of municipal fees; a fee is not a tax, even if it may be enforced using the summary tax sale procedure.

² E.g., S.C. Code Ann. § 5-7-80 (2004) (allowing municipalities to provide by ordinance for the clearing of rubbish, etc., from property and to provide that if the owner of such property fails to take appropriate action upon notice of “conditions needing correction” the cost of cleanup may “become a lien upon the real estate and . . . be collectable in the same manner as municipal taxes”); S.C. Code Ann. § 5-31-2040 (2004) (allowing a lien for sewer service charges to “be enforced . . . in the same manner and fashion as the lien of property taxes on real estate”).

exempts “[t]he first fifty thousand dollars of the fair market value of the dwelling place” of certain eligible persons from “county, municipal, school, and special assessment real estate property taxes.” *See also* S.C. Const. art. X, § 3 (authorizing such exemption).

We interpret this statute according to its plain language. *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009) (“If possible, legislative intent should be found in the plain language of the statute itself.”). In general, a taxpayer bears the burden to establish that he is entitled to a claimed exemption. *E.g.*, Letter to Debbie Owens, Op. S.C. Att’y Gen. No. 84-140 (Dec. 21, 1984). “Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemption. He must clearly bring himself within the constitutional or statutory language upon which he relies.” *Textile Hall Corp. v. Hill*, 215 S.C. 262, 276, 54 S.E.2d 809, 814 (1949) (quoted in Letter to The Honorable W.S. Richbourg, Op. S.C. Att’y Gen. No. 79-10 (Jan. 22, 1979)).

Nothing in section 12-37-250 applies expressly to fees included on a property tax bill. Rather, the statute applies specifically to “real estate property taxes.” *See also* S.C. Const. art. X, § 3 (authorizing exemption from “ad valorem taxation”). Fees and service charges are conceptually distinct from taxes. *See, e.g.*, Letter to The Honorable Murrell Smith, Op. S.C. Att’y Gen. (Aug. 25, 2011).

When asked whether a tax exemption pursuant to section 12-37-220 would result in an exemption from fees, this Office explained as follows:

Many county and city ordinances impose solid waste fees on dwellings, residences or other properties as a means for funding the disposal of solid waste. In some instances, these fees appear on the county or city tax bills as separately stated items. The question posed is whether the exemption provisions of Section 12-37-220 apply to such fees.

The language of Section 12-37-220 states that it exempts certain properties from ad valorem taxation. An ad valorem tax is a tax “upon the value of the article or thing subject to taxation.” Inasmuch as the fees in question are not based on the value of any particular property, they are not an ad valorem tax within the purview of Section 12-37-220.

Accordingly, the exemption provisions of Section 12-37-220 do not apply to such fees.

Letter to Michael L. Horton, Op. S.C. Att’y Gen. No. 94-48 (Aug. 15, 1994) (internal citation omitted).³ As further support for our conclusion that the tax exemption did not apply, we noted that the fees at issue appeared to be service charges, not taxes. *Id.*

³ Here, because you have not specified the type of fee at issue, we cannot know whether the fee is based upon the value of the property. As a practical matter, it is difficult to see how a homestead exemption for a portion of the value of property could apply to a fee that is not calculated using the value of that property. In other words, for some eligible persons, section 12-37-250 will not result in zero tax liability. As to those persons, it would be difficult to determine what portion of the fee should be abated.

In sum, an exemption from tax is not tantamount to an exemption from fees. Because the plain language of section 12-37-250 makes no mention of fees, it is the opinion of this Office that eligibility for a homestead exemption pursuant to that section will not alter a taxpayer's obligations with regard to fees included on his property tax bill.⁴

Conclusion

Municipalities have broad discretion in the conduct of their local affairs, including in the collection of municipal taxes. We have found no constitutional or statutory provision that would require a municipality to accept a partial payment satisfying a taxpayer's liability for taxes but not his liability for fees included on the tax bill. If payment of a fee is secured by a lien on real property, failure to pay the fee could result in a sale of that property. Whether such sale could be conducted using the procedures in title 12, chapter 51 of the South Carolina Code would depend upon the provisions of the statute that authorized the fee.

Section 12-37-250 of the South Carolina Code appears to have no bearing on these issues. That section provides an exemption from "real estate property taxes" for a portion of the value of an eligible person's dwelling place. Fees and service charges are not taxes, and the plain language of the exemption applies only to taxes. Courts will not strain the language of a tax exemption; rather, a taxpayer seeking exemption "must clearly bring himself within the constitutional or statutory language upon which he relies."

Very truly yours,



Dana E. Hofferber
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

⁴ It is a separate issue whether any item with which you are concerned has been labeled as a fee despite its true nature as a tax. Clearly, if an item is a tax, the homestead exemption could apply. Whether a particular item is in the nature of a fee or of a tax requires a fact-specific inquiry that is beyond the purview of this opinion. However, we refer you for guidance to the opinions of our Court in *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992), and *C.R. Campbell Construction Company v. City of Charleston*, 325 S.C. 235, 481 S.E.2d 437 (1997). We have enclosed these opinions for your convenience.